



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 20 2006

REPLY TO THE ATTENTION OF  
(AE-17J)

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Robert Burrows, President  
B & B Metals Processing Co., Inc.  
14520 Pioneer Road  
Newton, WI 53063

Dear Mr. Burrows:

Enclosed is a file stamped Consent Agreement and Final Order (CAFO) which resolves Clean Air Act violations alleged against B&B Metals Company at 14520 Pioneer Road, in Newton, WI 53063 CAA Docket No. CAA-05-2005-0054. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on JUN 22 2006.

Pursuant to paragraph 9 of the CAFO, B&B Metals Company must pay the civil penalty within 30 days of JUN 22 2006. Your check must display the case docket number, CAA-05-2005-0054, and the billing document number, 2750603A003.

Please direct any questions regarding this case to Deborah Carlson, Associate Regional Counsel, (312) 886-6121.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Bonnie Bush".

Bonnie Bush, Acting Chief  
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF:	)	Docket No. CAA-05-2005-0054
	)	
B & B Metals Processing	)	Proceeding to Assess a Civil
Company, Inc.,	)	Penalty under Section 113(d)
Newton, Wisconsin	)	of the Clean Air Act,
	)	42 U.S.C. § 7413(d)
Respondent.	)	

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Consent Agreement and Final Order

1. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On September 27, 2005, U.S. EPA filed the complaint in this action against Respondent, B & B Metals Processing Company, Inc. (B & B). The complaint alleges that B & B violated Section 112 of the Act, and 40 C.F.R. Part 63, Subpart RRR, the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production at its facility in Newton, Wisconsin.

3. B & B filed an answer and requested a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2).

Stipulations

4. B & B admits the jurisdictional allegations in the complaint and neither admits nor denies the factual allegations in the complaint.

5. B & B waives any right to contest the allegations in the complaint and its right to appeal this consent agreement and final order (CAFO).

6. B & B certifies that it is complying fully with the Secondary Aluminum Production NESHAP at 40 C.F.R. Part 63, Subpart RRR.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

8. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

9. In consideration of B & B's cooperation and agreement to perform a supplemental environmental project, U.S. EPA agrees to mitigate the proposed penalty of \$96,572 to \$30,000.

10. B & B must pay the \$30,000 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," within 30 days after the effective date of this CAFO.

11. B & B must send the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 371531  
Pittsburgh, PA 15251-7531

12. A transmittal letter, stating the Respondent's name, complete address, the case docket number, and the billing document number must accompany the payment. Respondent must write the case docket number and the billing document number on the face of the check. Respondent must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

Deborah Carlson, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

13. This civil penalty is not deductible for federal tax purposes.

14. If B & B does not pay timely the civil penalty, or any stipulated penalties due under paragraph 27 below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United

States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

15. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. B & B will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. B & B will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

**Supplemental Environmental Project**

16. B & B must complete a supplemental environmental project (SEP) designed to protect the public health by performing a paving project to reduce particulate emissions at its Newton, Wisconsin facility.

17. B & B must complete the SEP as follows:

- a. This SEP will consist of the paving of an approximately 100 ft. by 180 foot roadway at B & B's Newton, Wisconsin facility.
- b. The SEP must be completed by August 15, 2006 and must be done at current market prices.

18. B & B must spend at least \$80,563 to perform paving which includes the concrete, the mesh underneath, the concrete sealer and the associated labor.

19. B & B must continuously maintain and use the paved drive for 10 years following its installation.

20. B & B certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. B & B further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

21. U.S. EPA may inspect the facility at any time to monitor B & B's compliance with this CAFO's SEP requirements..

22. B & B must submit a SEP completion report to U.S. EPA by September 15, 2006. This report must contain the following information:

- a. detailed description of the SEP as completed;
- b. description of any construction problems and the actions taken to correct the problems;
- c. itemized costs of materials and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the materials and services;
- d. certification that B & B has completed the SEP in compliance with this CAFO; and
- e. description of the environmental and public health benefits resulting from the SEP and estimated pollution reductions.

23. B & B must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

24. In each report that B & B submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

25. Following receipt of the SEP completion report described in paragraph 22 above, U.S. EPA may notify B&B in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give B&B 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 27.

26. If U.S. EPA exercises option b. above, B&B may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of B&B's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give B&B a written

decision on its objection. B&B will comply with any requirements that U.S. EPA imposes in its decision. If B&B does not complete the SEP as required by U.S. EPA's decision, B&B will pay stipulated penalties to the United States under paragraph 27 below.

27. If B & B violates any requirement of this CAFO relating to the SEP, B & B must pay stipulated penalties to the United States as follows:

- a. If Respondent spent less than the amount set forth in paragraph 18, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 18.
- b. If Respondent has completed the SEP but the SEP is not satisfactory, Respondent must pay \$10,000 in addition to any penalty required under subparagraph 27a, above.
- c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$15,000 in addition to any penalty required under subparagraph 27a, above. The penalty will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 18 above for implementing the SEP, or fails to submit timely the SEP completion report required by paragraph 22, above, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$100	1 <sup>st</sup> through 14 <sup>th</sup> day
\$200	15 <sup>th</sup> through 30 <sup>th</sup> day
\$300	31 <sup>st</sup> day and beyond



These penalties will accrue from the date Respondent was required to meet each milestone until it achieves compliance with the milestone.

28. U.S. EPA's determinations of whether B & B satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind B & B.

29. B & B must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. B & B will use the method of payment specified in paragraph 18 above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

30. Any public statement that B & B makes referring to the SEP must include the following language, "B & B undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against B & B for violations of the National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production."

31. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

a. B & B must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), B & B's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. B & B must take all reasonable actions to avoid or minimize any delay. If B & B fails to notify U.S. EPA according to this paragraph, B & B will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of B & B caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of B & B caused or may cause a delay in completing the SEP, U.S. EPA will notify B & B in writing of its decision and any delays in completing the SEP will not be excused.

d. B & B has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

#### General Provisions

32. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the complaint.

33. This CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

34. This CAFO does not affect B & B's responsibility to comply with the Act and other applicable federal, state and local laws, and regulations. Except as provided in paragraph 32 above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by Complainant.

35. This CAFO constitutes an enforcement response as that term is used in U.S. EPA's Clean Air Act Stationary Source Civil

Penalty Policy to determine B & B's full compliance history under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

36. The terms of this CAFO bind B & B, and its successors, and assigns.

37. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

38. Each party agrees to bear its own costs and attorneys' fees in this action.

39. This CAFO constitutes the entire agreement between the parties.

**U.S. Environmental Protection Agency,  
Complainant**

Date

6/20/06

for Cheryl Newton  
Cheryl Newton, Acting Director  
Air and Radiation Division  
U.S. Environmental Protection

CONSENT AGREEMENT AND FINAL ORDER  
B & B Metals Processing Co., Inc.  
Docket No. CAA-05-2005-0054

B & B Metals Processing Company, Inc.  
Respondent

12 June 06  
Date

R + B J  
Robert Burrows, President,  
B&B Metals Processing Company, Inc.

CONSENT AGREEMENT AND FINAL ORDER  
B & B Metals Processing Co., Inc.  
Docket No. CAA-05-2005-0054

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk. This final order disposes of this proceeding pursuant to 40 C.F.R. § 22.18.

6-20-06

Date

Richard Karl for

Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3511

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2005-0054 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Mr. Robert Burrows and Mr. John Heyde Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Robert Burrows  
B & B Metals Processing Company, Inc.  
14520 Pioneer Road  
Newton, Wisconsin 53063

John Heyde  
Sidley Austin Brown & Wood LLP  
10 S. Dearborn Street  
Chicago, IL 60603

With Copies to:

Bill Bauman, Chief  
Bureau of Air Management 101 S. Webster St.  
P.O. Box 7921 (AM/7)  
Madison, WI 53703

Rick Wulk, Supervisor  
Northeast Region  
2984 Shawano Ave Box 10448  
Green Bay, WI 54307-0448

on the 22<sup>nd</sup> day of June, 2006.

  
Shanee Rucker  
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8919 3260

6 JUN 22 PM 4:10  
U.S. MAIL  
FIRST CLASS